

REMARKS

By amendment filed herewith, Claims 1, 4, 5, 6, 7, 11, and 15 have been amended in an effort to more particularly point out and distinctly claim the invention. Specifically, the amendments to the claims emphasize that the novelty of an elongate tuning bar/device/member having one end coupled to the railway line or to an attachment member that is itself coupled to the railway line, and having the other end freely extending therefrom. Applicant urges that this device is not disclosed or suggested in any of the references noted by the Examiner and particularly is not disclosed in any form in the applicant's earlier PCT WO97/04291. Therefore, claims 1-16 are pending in the application.

Status of the Pending Claims:

Claims 1 - 14 stand rejected under 35 USC 102(b) as unpatentable over Jury (WO97/04291). Claims 15 and 16 have been previously withdrawn from consideration as being improperly dependent on a multi-dependent claim. It is applicant's contention that all of the rejection and objection are addressed by the newly submitted amendments to the claims and the remarks which follow.

RESPONSE TO OBJECTION TO CLAIMS 15 AND 16

Claim 15 has been amended to remove dependency and is not an independent claim. Claim 16 depends thereon. These amendments are believed to avoid this ground of objection.

RESPONSE TO REJECTIONS Under 35 USC 102(b)

The Rejection of claims 1-14:

At pages 2-4 of the Office Action (OA) of September 28, 2006, the Examiner has set forth the basis for the rejection of currently pending claims 1-14 under 35 USC § 102(b) as being anticipated by Jury (WO97/04291). The Examiner urges, with regard to claim 1, that the reference:

discloses a tuning device (1) for use in testing the integrity of a railway line (40) to obtain an improved test signal, the tuning device (1) including an elongated member (32) adapted to be attachable at one end to the railway line being tested in situ or is attachable to an attachment member (30) coupled to the section of railway line, and wherein a vibration signal measuring means (31) is adapted to be secured to the other end of the elongate member (32).

Applicant would initially point out that the reference fails to disclose a tuning device as presently claimed. The device of the reference differs both as to manner of function and structurally. For example, the Examiner references no. "32" in the references as indicating an elongated member. However, reference no. "32" in the reference is an electrical cable, not a tuning device in any respect. The newly presented amendments further emphasize this difference by providing that the other end of the elongate freely extends therefrom the one end that is effectively coupled to the railway line. Also, as defined in the present Specification, the claimed structure corresponding to the "elongate member" can not be a wire or electrical cable of the type described in the reference.

It should be clear that the "elongate member" of the present claims physically transfers the vibration of the rail system. This is not an electrical

transfer as would occur in the device disclosed by the cited reference. Since the signal differs in form, the detector and measuring device also must differ in make up and function.

As to claims 2 to 10, they dependent on claim 1 and effectively include the limiting features of claim 1 as discussed above. Therefore, these claims are also not anticipated by the reference relied upon by the Examiner.

Claim 11, as presently amended, is an independent claim directed to the apparatus being used in the present invention and includes all the limiting features of the tuning device of claim 1 and is therefore not anticipated by the reference relied upon by the Examiner for reasons as discussed above with regard to claim 1. Claims 12 to 14 dependent on claim 11 so the same submissions apply.

Claim 15 has been amended to avoid the dependency objection and now further includes all of the features of claim 11 and thus is not anticipated by the cited reference for reasons discussed above. Claim 6, which depends from claim 15, and thus also includes those limitations discussed above which serve to distinguish the presently claimed invention from the disclosure of the cited reference.

Applicant would urge that anticipation requires the disclosure, in a single prior art reference, of each element of the claim under consideration. W.L. Gore & Assoc. v. Garlock, Inc. , 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983). Here, presently amended claims 1, 11, and 15, and thus the claims which

depend therefrom, include specific limitations which the reference relied upon by the Examiner fails to disclose or even suggest. These limitations are discussed above.

Thus, applicant would, respectfully, request reconsideration of this ground of rejection.

Conclusion:

In conclusion, applicant has presented amendments and arguments relating to the rejection set forth in the Office action of September 28, 2006. Applicant, respectfully, request that the Examiner reconsider the rejection as they might be applied to the presently pending claims and find all claims allowable.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 CFR §§ 1.16-1.17 or credit any overpayment, to deposit account No. 503321. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, or otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 503321.

Respectfully submitted,

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